

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 29, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2559

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

PEGGY S. MC CRACKEN,

**PLAINTIFF-RESPONDENT-
CROSS APPELLANT,**

V.

TODD A. REEKIE,

DEFENDANT-RESPONDENT,

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

**DEFENDANT-APPELLANT-
CROSS RESPONDENT.**

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Monroe County: STEVEN ABBOTT, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. American Family Mutual Insurance Company appeals from a judgment declaring that it must continue as a defendant in this personal injury action and that it has a duty to defend its co-defendant, Todd Reekie. Reekie struck and injured the plaintiff, Peggy McCracken, while driving his brother's car. His policy with American Family excluded coverage for injury "arising out of the use of any vehicle, other than your insured car, which is owned by ... any resident of your household." The judgment followed a jury verdict that Reekie's brother, Gary, was not a resident of his household for insurance purposes. The issue is whether the trial court properly instructed the jury on the residency issue. We conclude that the trial court gave proper instructions and therefore affirm.¹

In relevant part, the trial court instructed the jury as follows:

There is a provision in Todd Reekie's insurance policy with American Family Mutual Insurance Company that is known as a "drive-other-car exclusion." It provides that there is no insurance coverage for "damage arising out of the use of any vehicle, other than your insured car, which is owned by ... any resident of your household."

The purpose of the drive-other-car provision is to prevent a policyholder from insuring all the cars in one household by taking out just one policy for one car and paying only one premium.

The burden of proof with respect to your answer to this verdict question is, thus, upon the insurer, American Family, which contends that you should answer the question, "Yes." A finding of residency precludes coverage.

¹ Our decision to affirm makes it unnecessary to address McCracken's cross-appeal, which takes issue with an order denying her motion for summary judgment.

American Family contends that this instruction “injected into deliberation an issue of insurance contract construction when [the court] provided the jury with the specific language of the drive-other-car exclusion and provided the jury with its interpretation of the purpose behind the drive-other-car exclusion.”²

We disagree. The jury was charged with answering a single verdict question: “On May 18, 1991, was Gary Reekie a resident of Todd A. Reekie’s household for insurance purposes?” The court reasonably put that question in context by explaining to the jury why it mattered. By doing so, the court did not instruct the jury to construe American Family’s insurance contract, and contending that the jury nevertheless did so, despite the narrow verdict question, is nothing more than speculation. There is no indication that the jury’s knowledge of the purpose of the exclusion and the result of its verdict misled it or caused it to reach its decision on any basis other than the evidence before it.

American Family also contends that the court incompletely described the purpose of drive-other-car provisions. However, American Family did not request a more complete explanation and therefore waived the issue. In any event, what American Family now presents as a complete explanation of the purpose adds relatively little to the court’s explanation. As a result, there was no reasonable probability of a different result with the fuller explanation, and we disregard the claim of error on that basis as well as on waiver. *See* § 805.18(2), STATS.

² In its initial brief, American Family also argued that the trial court committed reversible error by advising the jury that a finding of residency precludes coverage, thus impermissibly informing it of the effect of its verdict. In its reply brief, American Family has withdrawn that claim of error.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

